

REMARKS/ARGUMENTS

Claims 13, 15, 20 and 21 are in the case. Claims 13 and 20 have been amended to recite the presence of 3.5% to 10% ethanol. Basis for 3.5% is at page 21, l. 6 (2d column). Basis for 10% is at page 11, l. 17. Claims 13 and 20 have also been amended to recite the potassium soaps. Basis is at page 7, l. 8-9. Claims 15 and 21 have been amended to delete the "optionally" language with respect to the sequestrant. These amendments add no new matter, and entry is requested.

Rejections Under 35 USC 112

For the record, there are no formal rejections outstanding.

Rejections Under 35 USC 103

All claims stand rejected over U.S. 5,549,758, in view of U.S. 4,808,330, for reasons of record at pages 2-3 of the Office Action. U.S. 5,507,968 is cited to show an assertedly universal fact.

Applicants respectfully traverse the rejections, to the extent they may apply to the claims as now amended.

At the outset, there appears to be some confusion between the terms "laurate" and "lauryl sulfate". The laurate terminology refers to fatty acid salts (soaps), specifically $C_{11}H_{23}COO-Na^+$ in the case of sodium laurate. The lauryl sulfate language refers to $C_{12}H_{25}OSO_3^-M^+$ surfactants, where M can be sodium, potassium, etc. .

Moreover, at page 3 of the Office Action the Examiner appears to have misapprehended the statement in the previous responsive amendment regarding surfactant stability. There was no intention to imply that dodecylbenzene sulfonate (DBS) or equivalent surfactants would be unstable under acidic or basic conditions. All that was intended was to note the fact that the U.S. 5,549,758 document (Col. 9, l. 17-18) discloses that some listed surfactants described in the CFR suffer from a lack of stability in either acid or basic conditions. Again, there is no implication from the quoted portion of '758 that DBS would be unstable in either the present compositions or the compositions of '758.

What is clear from '758 is that if/when the fluid carrier employed therein comprises water/ethanol, the ethanol level should preferably not exceed 2%. See '758 at Col. 10, l. 56 and Col. 12, Example II and Examples III A and III B. In sharp contrast with '758, the compositions (and methods) herein require the use of aqueous carriers which contain 3.5%-10% ethanol.

Accordingly, it is submitted that '758 teaches away from levels of ethanol recited in the claims herein.

Furthermore, it is submitted that '758, in combination with '330, does not teach or suggest the present invention.


As a matter of law, it is submitted that it is not permissible to combine a document, such as '758, which teaches away from an invention with another document in order to arrive at a rejection under §103. *Michael L. McGinley v. Franklin Sports, Inc.*, 262 F. 3d 1339; 60 U.S.P.Q. 2d (BNA) 1001 (CAFC 2001) and cases cited therein.

This is particularly true in the instant case, where '330 also teaches away from the present invention. As noted in '330 at Col. 1, l. 40-46 and 53-55, the patentees actively teach away from the use of any type of surfactants in the claimed compositions. Instead, as explained at Col. 2, l. 18-21, the '330 compositions employ sodium chloride, organic alcohol and coconut oil.

In summary, it is submitted that '758 teaches away from the use of the herein-claimed ethanol levels. The '330 document teaches away from the use of surfactants. Accordingly, it is respectfully submitted that this asserted combination of references does not fairly teach or suggest the present invention in the sense of §103. Reconsideration and withdrawal of the rejections on this basis are requested.

In light of the above, early and favorable action in the case is respectfully requested.

Respectfully submitted,
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